IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 520 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANBHAI NARANBHAI MAKWANA - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PRAVIN GONDALIYA for Applicant(s) : 1,
MR AY KOGJE, APP for Respondent(s) : 1,
MR YATIN SONI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/04/2007

ORAL JUDGMENT

1. Rule. Learned APP Shri A.Y. Kogje waives service of rule on behalf of State. Leaned advocate Shri Yatin Soni waives service of rule on behalf

of respondents nos. 2 and 3.

2. Heard learned advocate Shri Yogesh Lakhani with Shri Pravin Gondaliya for the applicant. In this application, applicant original accused has prayed for transfer of a criminal case pending before the learned Chief Judicial Magistrate Court, Rajkot being case No.147/2005 arising out of complaint bearing C.R. No.I-572/2004 filed before Pradyumannagar police station to the learned Sessions Judge, Rajkot before whom the Atrocity Case No. 10/2005 arising out of C.R. No.587/2004 filed by the petitioner herein before Pradyumannagar police station is pending.

3. Shortly stated fact leading to the present petition are as follows :

2.1 The petitioner is one of the co-accused in Criminal Case No.147/2005 arising out of C.R. No. I-572/2004 filed before Pradyumannagar police station, Rajkot, alleging offences punishable under Sections 409, 406,420 read with Section 114 of Indian Penal Code. The allegations against the petitioner included that he along with other co-accused had misappropriated a sum of Rs.4,50,000/-. The petitioner was at the relevant time Head Cashier in the Bank of Baroda, Bhaktinagar branch, Rajkot, whose money was so misappropriated.

2.2 It is the case of the petitioner that when he was arrested by the police authorities, pursuant to the said complaint filed against him and other accused persons and interrogated, he was severely beaten up and tortured in police custody. On account of the injuries received by him, he had to be hospitalised in Government hospital from 18th October, 2004 till 29th October, 2004. The petitioner upon completion of interrogation was produced before the Magistrate before whom he had immediately made a complaint about beating. He filed a formal complaint in this regard on 25th October, 2004. Investigation was carried out regarding the allegations made by the petitioner in the said complaint and eventually the charge-sheet came to be filed by the prosecution on 24th December, 2004. The said case arising out of the complaint filed by the petitioner, of the petitioner having been beaten by the police officers, as also involving the allegations of commission of offences punishable under Schedule Caste and Schedule Tribe (Prevention of Atrocities Act) is pending before the Sessions Court, Rajkot.

2.3 The petitioner attempted to have both the cases consolidated and tried before the learned Sessions Judge. However, having failed in his attempt, he has filed this application seeking transfer of the above-mentioned Criminal

Case No.147/2005 from the Court of Chief Judicial Magistrate, Rajkot to the Court of learned Sessions Judge, Rajkot. It is the case of the petitioner that in the interest of justice and to avoid conflicting of evidence in both the cases, it is necessary that cases proceed before the same Court and be consolidated so that common evidence can be recorded.

4. Having heard learned advocates appearing for the petitioner as well as learned APP Shri Kogje for the State, I do not find that the petitioner has made out any case for transfer of the criminal case pending against him.

5. As noted earlier, broad allegations against the petitioner in the said case are of his having siphoned off a sizeable amount of Rs. 4,50,000/- belonging to the bank in which he was employed in connivance with the other co-accused persons. When the petitioner was being interrogated in connection with this complaint, he was allegedly tortured by the Investigation Officers. The petitioner in this regard first complained to the Magistrate before whom he was produced and later on filed a formal complaint dated 25th October, 2004. He is also treated in Government hospital on account of the injuries received by him allegedly during such torture. It is this second case initiated by the petitioner which is

being heard by the learned Sessions Judge, Rajkot.

6. It is not in dispute that, so far, the criminal case no. 147/2005 pending before Chief Judicial Magistrate Court, Rajkot has not commenced in true earnest. Recording of evidence has yet not started. Perhaps charge is also not framed. On the other hand, it is not in dispute that in the criminal case no. 10/2005 being conducted by the learned Sessions Judge, Rajkot, the trial was in full swing before the petitioner approached this Court by filing Special Criminal Application No. 75/2006, seeking reinvestigation. The prosecution had examined as many as 11 witness by 18th January, 2006.

7. Considering the above aspects of the matter, I do not find it either appropriate or necessary to consolidate the two proceedings as requested by the petitioner. Additionally, I also find that both the cases involve substantially different facts and legal provisions. The first case is regarding the allegations of the petitioner and other co-accused persons having misappropriated funds of the bank whereas the case before the learned Sessions Judge, Rajkot initiated by the petitioner pertains to his having been ill treated during the interrogation by the police authorities. Barring certain peripheral materials or orders, there is no

commonality of evidence or of issues. No useful purpose would therefore, be served in transferring the criminal case no. 147/2005 pending before the Chief Judicial Magistrate, Rajkot.

8. This petition is rejected. Rule is discharged.

(Akil Kureshi,J.)

(raghu)